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MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Patent No. 7,636,489 : DECISION ON REQUEST
Zimmer : FOR
Issue Date: December 22, 2009: RECONSIDERATION OF
Application No. 10/826,596 : PATENT TERM ADJUSTMENT
Filed: April 16, 2004 : and
Atty Docket No. 119-0035US : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on July 8, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, five hundred and fifteen (1,515) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by **one thousand, five hundred and fourteen (1,514) days** is **GRANTED to the extent indicated herein¹**.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

¹ The appeal period excluded from the "B" delay period is 168 days, not 167. "When a period is indicated (in 37 CFR 1.703 or 1.704) as 'beginning' on a particular day, that day is included in the period, in that such day is 'day one' of the period and not 'day zero.'" MPEP 2731. "For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length." *Id.* Thus, in this instance, the period of appeal excluded from the "B" delay period is 168 days with said period beginning August 12, 2008, and ending January 26, 2009.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, five hundred and fourteen(1,514)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,636,489 B2

DATED : Dec. 22, 2009

INVENTOR(S) : Zimmer

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (981) days

Delete the phrase "by 981 days" and insert – by 1514 days--